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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

THERESA RICHARD, an individual,
on behalf of herself and others similarly
situated

PLAINTIFF,

v.

THE LELAND STANFORD JUNIOR
UNIVERSITY; and DOES 1 thru 50,
inclusive

DEFENDANTS.

CASE NO.

CLASS ACTION COMPLAINT FOR:

1. Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures, 15 U.S.C. § 1681b, et seq.;
2. Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization, 15 U.S.C. § 1681b, et seq.;

DEMAND FOR A JURY TRIAL

1 Plaintiff THERESA RICHARD ("Plaintiff"), on behalf of herself and all
2 others similarly situated, alleges on information and belief, except for her own acts
3 and knowledge, the following:

4 **I.**

5 **INTRODUCTION**

6 1. Defendant THE LELAND STANFORD JUNIOR UNIVERSITY
7 ("Defendant") is a California Corporation and at all relevant times mentioned herein
8 conducted and continues to conduct substantial and regular business throughout
9 California.

10 2. Defendant is a private research university.

11 3. Plaintiff applied, was hired, and performed work through Defendant's
12 Residential and Dining Enterprises as a dining hall worker in Stanford, California.

13 4. During the application process, Plaintiff filled out Defendant's standard
14 application form permitting Defendant to obtain a consumer report verifying
15 Plaintiff's background and experience.

16 5. Plaintiff now brings this Class Action on behalf of herself and a
17 nationwide class, defined as:

18 "all individuals for whom a consumer report was procured by
19 Defendant for employment purposes during the period beginning
20 August 16, 2015 and ending on the date as determined by the
21 Court." (the "Proposed Class")

22 **II.**

23 **JURISDICTION AND VENUE**

24 6. The Court has jurisdiction over Plaintiff's federal claims pursuant to 28
25 U.S.C. §1331 and 15 U.S.C. §1681 of the Fair Credit Reporting Act 15 U.S.C. §1681
26 *et seq.* ("FCRA").

27 7. Venue is proper in this district pursuant to 28 U.S.C. §1391(d) because
28 Defendant is subject to personal jurisdiction in this district, maintains offices in this

1 district, and the actions at issue took place in this district.

2 **III.**

3 **THE PARTIES**

4 **A. PLAINTIFF**

5 8. Plaintiff applied to work for Defendant on June 27, 2017 in Stanford,
6 California located in the County of Santa Clara, California.

7 9. Plaintiff completed Defendant's standard application form including an
8 authorization to obtain a background check.

9 10. Plaintiff was hired and began work for Defendant through its
10 Residential and Dining Enterprises as an hourly dining hall worker.

11 11. Plaintiff was confused by the standard application form and did not
12 understand that Defendant would be requesting a "consumer report" as defined in
13 the FCRA. Nonetheless, upon information and belief, Defendant then secured a
14 consumer report.

15 **B. DEFENDANT**

16 12. Defendant is a California Corporation. At all times relevant herein,
17 Defendant conducted and continues to conduct business throughout the State of
18 California including hiring and employees such as Plaintiff.

19 13. Defendant's entity address listed with the California Secretary of State
20 is 450 Serra Mall Building 10, Stanford, CA 94305.

21 14. Defendant is a private research university consisting of 40 academic
22 departments at the undergraduate and graduate level and four professional schools
23 that focus on graduate programs in Law, Medicine, Education, and Business.

24 15. Defendant issues, and during the relevant period issued, payroll checks
25 to Plaintiff and all other persons similarly situated.

26 16. With respect to the events at issue in this case, Defendant acted as the
27 employer of Plaintiff and all other persons similarly situated. As the employer,
28 Defendant is liable for the violations of law described in this Complaint.

1 17. Plaintiff is ignorant of the true name, capacity, relationship and extent
2 of participation in the conduct herein alleged of the Defendant sued herein as DOES
3 1 through 10, but are informed and believe and thereon allege that said Defendant
4 are legally responsible for the wrongful conduct alleged herein and therefore sue
5 these Defendant by such fictitious names. Plaintiff will amend this compliant to
6 allege their true names and capacities when ascertained.

7 18. Plaintiff is informed and believes and thereon allege that each
8 Defendant acted in all respects pertinent to this action as the agent of the other
9 Defendant, and/or carried out a joint scheme, business plan or policy in all respects
10 pertinent hereto, and/or the acts of each Defendant are legally attributable to the
11 other Defendant.

12 IV.

13 NATURE OF THE ACTION

14 19. The FCRA provides individuals with a number of rights. Specifically,
15 pertaining to employment-related background checks referred to as "consumer
16 reports", the FCRA provides that a prospective employee must give valid consent
17 to the background check. The FCRA requires a signed authorization and disclosure
18 from the applicant, sometimes referred to as a "consent" form.

19 20. The authorization and disclosure form must be executed and signed by
20 the applicant prior to an employer requesting or conducting a background check.
21 Importantly, no extraneous information can be attached or included on the consent
22 form. The authorization and disclosure must stand-alone. Here, Defendant included
23 extraneous information including, but not limited to, a release of liability.

24 21. In violation of 15 U.S.C. §1681b(b)(2)(A)(i), Defendant has unlawfully
25 inserted liability release provisions into its standard application form purporting to
26 grant Defendant the authority to obtain and use consumer report information for
27 employment purposes for Plaintiff and all Proposed Class Members. The FCRA
28 prohibits this practice and requires that forms granting the authority to access and

1 use consumer report information for employment purposes be stand-alone forms,
2 and not include any additional information or agreements. Defendant's decision to
3 include liability release provisions in its standard application form is contrary to the
4 plain language of the statute and unambiguous regulatory guidance from the Federal
5 Trade Commission ("FTC").

6 22. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii), Defendant has obtained
7 consumer reports regarding Plaintiff and all Proposed Class Members without proper
8 authorization because the authorization and disclosure forms failed to comply with
9 the requirements of the FCRA.

10 23. The inclusion of the liability waiver in Defendant's standard application
11 form invalidates the purported consent and also triggers statutory damages under the
12 FCRA in the amount of up to \$1,000 for each applicant that Defendant obtained a
13 consumer report without a facially valid, executed authorization, as well as punitive
14 damages, equitable relief, and attorneys' fees and costs.

15 24. In addition, Defendant's failure to secure signed disclosure and
16 authorization forms invalidates the purported consent and also triggers statutory
17 damages under the FCRA in the amount of up to \$1,000 for each applicant that
18 Defendant obtained a consumer report without a facially valid, executed
19 authorization, as well as punitive damages, equitable relief, and attorneys' fees and
20 costs.

21 V.

22 **FACTUAL ALLEGATIONS**

23 25. Plaintiff applied to work for THE LELAND STANFORD JUNIOR
24 UNIVERSITY. Plaintiff filled out Defendant's standard application form permitting
25 Defendant to obtain a consumer report verifying Plaintiff's background and
26 experience.

27 26. Plaintiff was confused by the standard application form and did not
28 understand that Defendant would be requesting a "consumer report" as defined in

1 the FCRA. Nonetheless, upon information and belief, Defendant then secured a
2 consumer report.

3 27. Defendant's standard application form states: "I authorize a thorough
4 investigation of my prior employment, education background, criminal record, and
5 where applicable to a position, credit check and/or driving record. I agree to
6 cooperate in such an investigation, to execute any consent forms required in
7 connection with those investigations, and release from all liability and responsibility
8 all persons or entities requesting or supplying such information. I understand that
9 employment is conditional based on investigation results."

10 28. Upon information and belief, Defendant required all applicants to
11 complete the same standard disclosure and authorization form permitting Defendant
12 to obtain a consumer report verifying the applicant's background and experience and
13 containing a liability release.

14 29. Thus, in addition to the authorization and disclosure to obtain
15 information about background and experience, Defendant's standard application
16 form also contained a liability release provision.

17 30. The inclusion of this liability release provision in Defendant's standard
18 application form permitting Defendant to obtain a consumer report verifying an
19 applicant's background and experience violates the FCRA, 15 U.S.C. § 1681, *et seq.*

20 31. Under the FCRA, it is unlawful to procure a consumer report or cause
21 a consumer report to be procured for employment purposes, unless:

22 (i) a clear and conspicuous disclosure has been made in writing to
23 the consumer at any time before the report is procured or causes
24 to be procured, in a document that consists solely of the
disclosure, that a consumer report may be obtained for
employment purposes; and

25 (ii) the consumer has authorized in writing (which authorization may
26 be made on the document referred to in clause (i)) the
procurement of the report.

27 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii)

28 32. Although the disclosure required by clause (i) and the authorization

1 required by clause (ii) above may be combined in a single document, the FTC has
2 warned that the form should not include any extraneous information. Further, the
3 FTC has also specifically warned that the inclusion of such a waiver in a disclosure
4 form will violate Section 604(b)(2)(A) of the FCRA [15 U.S.C. §§ 1681b(b)(2)(A),
5 which requires that a disclosure consist solely of the disclosure that a consumer
6 report may be obtained for employment purposes.

7 33. This requirement is meant to prevent the consumer from being
8 distracted by other side-by-side with this very important disclosure. The disclosure
9 shall not be diminished in importance by including unrelated information. The
10 disclosure must be clear and conspicuous, understandable and noticeable.

11 34. By including a liability release in its standard application form
12 permitting Defendant to obtain a consumer report verifying the applicant's
13 background and experience, Defendant's conduct is contrary to the plain language
14 of the statute. Defendant willfully disregarded the FTC's regulatory guidance and
15 violated 15 U.S.C. §§ 1681b(b)(2)(A).

16 35. Defendants' failure to provide a clear disclosure, in a document that
17 consists solely of the disclosure, deprived Plaintiff and others similarly situated of
18 the right to information and the right to privacy guaranteed by 15 U.S.C. section
19 1681b(n)(2)(A)(i)–(ii). Because Defendant unlawfully included extraneous
20 information in its standard form permitting Defendant to obtain a consumer report
21 verifying Plaintiff's background and experience, Plaintiff was confused by the
22 standard form document and did not understand that Defendant would be requesting
23 a "consumer report" as defined in the FCRA.

24 VI.

25 THE CLASS

26 36. Plaintiff brings the First and Second Causes of Action on behalf of
27 herself and all others similarly situated as a Class Action pursuant to Rule 23(a) and
28 23(b)(3) of the F.R.C.P. Plaintiff satisfies the requirements of Rule 23(a) and (b)(3)

1 for the prosecution of this action as a class action. Plaintiff seeks to represent a
2 putative class composed of and defined as follows:

3 “all individuals for whom a consumer report was procured by
4 Defendant for employment purposes during the period beginning
5 August 16, 2015 and ending on the date as determined by the
6 Court.” (the “Proposed Class”)

7 37. Plaintiffs reserve the right to amend or modify the class description with
8 greater specificity or further division into subclasses or limitation to particular
9 issues.

10 38. Defendant, as a matter of corporate policy, practice, and procedure, in
11 violation of 15 U.S.C. §1681, et seq., intentionally, knowingly, and willfully,
12 engaged in a practice whereby Defendant uniformly, unfairly, and unlawfully
13 instituted a policy of including a liability release in its standard application form.

14 39. Defendant uniformly violated the rights of the Proposed Class by
15 violating the FCRA 15 U.S.C. §1681b(b)(2)(A)(i)-(ii) by including a liability release
16 in its standard application form.

17 40. This class action on behalf of members of the Proposed Class meets the
18 statutory prerequisites for the maintenance of a class action as set forth in Rule 23(a)
19 and 23(b)(3) of the F.R.C.P.

20 A. Numerosity

21 41. The Proposed Class is so numerous that joinder of all class members is
22 impracticable. While the precise number of members of the Proposed FCRA Class
23 has not been determined at this time, Plaintiff is informed and believes that
24 Defendant, during the relevant period, had applicants that numbered well over 1,000.

25 42. Plaintiff alleges that Defendant’s records will provide information as to
26 the number of all members of the Proposed Class.

27 B. Commonality

28 43. There are questions of law and fact common to the Proposed Class that

predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

- a. Whether Defendant required members of the Proposed Class to fill out a standard application form permitting Defendant to obtain a consumer report verifying the applicant's background and experience;
- b. Whether Defendant's standard application form permitting Defendant to obtain a consumer report verifying the applicant's background and experience complies with 15 U.S.C. §1681, et seq.;
- c. Whether Defendant violated 15 U.S.C. §1681, et seq. by including a liability release in its standard application form permitting Defendant to obtain a consumer report verifying the applicant's background and experience;
- d. Whether Defendant violated 15 U.S.C. §1681, et seq. by procuring consumer reports without valid authorization; and
- e. Whether Defendant's violations of 15 U.S.C. §1681, et seq. were willful.

C. Typicality

44. The claims of the named Plaintiff are typical of the claims of the members of the Proposed Class.

45. Plaintiff is a member of the Proposed Class. Plaintiff was an applicant and filled out Defendant's standard form permitting Defendant to obtain a consumer report verifying an applicant's background and experience during her application process. Plaintiff was subjected to the same unlawful practices as other members of the Proposed Class.

46. Plaintiff and other members of the Proposed Class suffered the same injuries and seek the same relief.

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D. Adequacy of Representation

47. Plaintiff will fairly and adequately represent and protect the interests of the members of the Proposed Class.

48. Counsel for Plaintiff are competent and experienced in litigating large complex consumer and wage and hour class actions.

E. Predominance and Superiority of a Class Action

49. A class action is superior to other available means for fair and efficient adjudication of this controversy. Individual joinder of all members of the Proposed Class is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Proposed Class.

50. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

51. Class action treatment will allow a large number of similarly situated employees to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, the monetary amounts due to many individual class members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the members of the Proposed Class to seek and obtain relief. Moreover, a class action will serve an important public interest by permitting employees harmed by Defendant's unlawful practices to effectively pursue recovery of the sums owed to them.

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VII.

FIRST CAUSE OF ACTION
FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE
FCRA
[15 U.S.C. § 1681b(b)(2)(A)(I), ET SEQ.]
(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS
AGAINST ALL DEFENDANTS)

52. Plaintiff, and the other members of the Proposed Class, reallege and incorporate by this reference, as though set forth herein, the prior paragraphs of this complaint.

53. Defendant violated 15 U.S.C. §1681b(b)(2)(A)(i) of the FCRA by including a liability release in its standard application form permitting it to obtain a consumer report verifying an applicant's background and experience that Defendant required Plaintiff and all other members of the Proposed Class to fill out as a condition of seeking employment with Defendant.

54. The violations of the FCRA were willful. Defendant knew that its standard application form permitting it to obtain a consumer report verifying an applicant's background and experience should not include extraneous information that is prohibited by the FCRA, and acted in deliberate disregard of its obligations and the rights of Plaintiff and all other members of the Proposed Class under 15 U.S.C. § 1681b(b)(2)(A)(i).

55. Plaintiff and all other members of the Proposed Class are entitled to statutory damages of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

56. Plaintiff and all other members of the Proposed Class are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. §1681n(a)(2).

57. Plaintiff and all other members of the Proposed Class are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. §1681n(a)(3).

VIII.

SECOND CAUSE OF ACTION

FOR FAILURE TO OBTAIN PROPER AUTHORIZATION IN VIOLATION

OF THE FCRA

[15 U.S.C. § 1681b(b)(2)(A)(II)]

(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED CLASS

AGAINST ALL DEFENDANTS)

58. Plaintiff, and the other members of the Proposed Class, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

59. Defendant violated the FCRA by procuring consumer reports relating to Plaintiff and all other members of the Proposed Class without proper authorization. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

60. The violations of the FCRA were willful. Defendant acted in deliberate disregard of its obligations and the rights of Plaintiff and all other members of the Proposed Class under 15 U.S.C. § 1681b(b)(2)(A)(ii).

61. Plaintiff and all other members of the Proposed Class are entitled to statutory damages of not less than \$100 and not more than \$1,000 for every violation of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

62. Plaintiff and all other members of the Proposed Class are also entitled to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

63. Plaintiff and all other members of the Proposed Class are further entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. § 1681n(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the Proposed Class:

- 1 A) That the Court certify the First and Second Causes of Action asserted
2 by the Proposed Class as a Class Action pursuant to Fed. R. Civ. Proc.
3 23(b)(2) and/or (3);
- 4 B) A determination and judgment that Defendant willfully violated 15 U.S.C.
5 § 1681(b)(2)(A)(i) and(ii) of the FCRA by improperly including liability
6 release language in its standard application form permitting it to obtain a
7 consumer report verifying an applicant's background and experience and
8 by obtaining consumer reports on Plaintiff and all other members of the
9 Proposed Class without having proper authorization to do so;
- 10 C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to
11 Plaintiff and all other members of the Proposed Class in an amount equal
12 to \$1,000 for Plaintiff and all other members of the Proposed Class for
13 Defendant's willful violation of the FCRA;
- 14 D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to
15 Plaintiff and all other members of the Proposed Class;
- 16 E) An award for costs of suit and reasonable attorneys' fees pursuant to 15
17 U.S.C. § 1681n(a)(3); and,
- 18 F) Such other and further relief as the Court deems just and equitable.

19
20 **DEMAND FOR JURY TRIAL**

21
22 DATED: October 30, 2018

KINGSLEY & KINGSLEY, APC

23
24 By: _____

25 Eric B. Kingsley
26 Kelsey M. Szamet
27 Attorneys for Plaintiff
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